

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

O R D E R

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following amendments to court rules.

I. Technical Amendments to Supreme Court Rule 37

1. Amend Supreme Court Rule 37(3)(c) to clarify that it is consistent with the provisions of Supreme Court Rule 37A(VI)(d) as set forth in Appendix A.

II. Amendments As To Retention of Attorney Discipline Office Records

2. Amend Supreme Court Rule 37A(IV) on a temporary basis as set forth in Appendix B.

III. Amendment to Professional Conduct Rule 5.5

3. Amend Professional Conduct Rule 5.5, which took effect on a temporary basis on March 1, 2007, by repealing subsection (e) as set forth in Appendix C.

Effective Date

These amendments shall take effect immediately. The temporary amendment in Appendix B shall be referred to the Advisory Committee on Rules for its recommendation as to whether it should be adopted on a permanent basis.

Note: To assist the reader in identifying the changes that are being made to existing rules, the appendix contains two versions of the amended rules. The first version, entitled "Unofficial Annotated Version," highlights the amendments to the rules by placing new material both in **[brackets and in bold-face type]**, and by ~~striking out~~ material that has been deleted from the rules. The second version, entitled "Official Version," sets forth the official version of the newly amended rules without annotations.

Date: April 2, 2007

ATTEST: _____
Eileen Fox, Clerk of Court
Supreme Court of New Hampshire

APPENDIX A

Amend Supreme Court Rule 37(3)(c) by deleting the last paragraph of said subsection (c) and replacing it with the following:

Unofficial Annotated Version

Any attorney aggrieved by a finding of professional misconduct or by a sanction imposed by the professional conduct committee shall have the right to appeal such finding and sanction to this court; disciplinary counsel shall have the right to appeal a sanction. Such appeals shall not be mandatory appeals. Such rights must be exercised within thirty (30) days from the date on the notice of the finding and sanction. In the event that ~~an attorney aggrieved by a finding of professional misconduct and sanction imposed by the professional conduct committee has filed~~ a timely request for reconsideration pursuant to Supreme Court Rule 37A(VI) **[is filed]**, the right to appeal the finding of professional misconduct ~~and~~ **[and/or]** the sanction shall be exercised within thirty (30) days from the date of the letter notifying the attorney of the professional conduct committee's decision on the request for reconsideration. Successive requests for reconsideration shall not stay the running of the appeal period. The manner of the appeal shall be based on the record before the professional conduct committee. The findings of the professional conduct committee may be affirmed, modified or reversed.

Official Version

Any attorney aggrieved by a finding of professional misconduct or by a sanction imposed by the professional conduct committee shall have the right to appeal such finding and sanction to this court; disciplinary counsel shall have the right to appeal a sanction. Such appeals shall not be mandatory appeals. Such rights must be exercised within thirty (30) days from the date on the notice of the finding and sanction. In the event that a timely request for reconsideration pursuant to Supreme Court Rule 37A(VI) is filed, the right to appeal the finding of professional misconduct and/or the sanction shall be exercised within thirty (30) days from the date of the letter notifying the attorney of the professional conduct committee's decision on the request for reconsideration. Successive requests for reconsideration shall not stay the running of the appeal period. The manner of the appeal

shall be based on the record before the professional conduct committee. The findings of the professional conduct committee may be affirmed, modified or reversed.

APPENDIX B

Amend Supreme Court Rule 37A(IV) on a temporary basis by deleting said section and replacing it with the following:

Unofficial Annotated Version

(IV) Confidentiality and Public Access

(a) Confidentiality of and Public Access to Proceedings and Records.

(1) *General Rule.* The confidentiality of and public access to records, files and proceedings shall be governed by Supreme Court Rule 37.

(2) Public Access to Files.

(A) *Grievance against Person Not Subject to Rules of Professional Conduct.* Correspondence to the grievant relating to a grievance against a person who is not subject to the rules of professional conduct shall be available for public inspection for a period of two years. After this two-year period, the correspondence shall be sealed **[destroyed]**.

(B) *Grievance Not Docketed as a Complaint.* All records (other than work product, internal memoranda and deliberations) relating to a grievance filed against a person who is subject to the rules of professional conduct but which is not docketed as a complaint, shall be maintained at the attorney discipline office for two (2) years from the date of original filing, and it shall be available for public inspection during this period. After this two-year period, the records shall be sealed **[destroyed]**.

(C) *Complaints.* All records (other than work product, internal memoranda and deliberations) relating to a complaint that is docketed shall be maintained at the attorney discipline office and shall be available for public inspection in accordance with the provisions of Supreme Court Rule 37, ~~unless the complaint has been annulled in accordance with section (V) of this rule.~~ **[Paper records may be destroyed after:**

(i) three years of the date of notice of dismissal, with or without a caution; or

(ii) three years of the date of an annulment in accordance with section (V) of this rule; or

(iii) five years after the death of the attorney-respondent.]

(D) *Index of Complaints.* The attorney discipline office shall maintain an index of complaints docketed against each attorney, which shall contain pertinent information, including the outcome of the complaint. No index of grievances that are not docketed as complaints shall be maintained.

(E) *Protective Order.* Any person or entity, at any point in the processing of a complaint, may request a protective order from the professional conduct committee, or the committee may issue on its own initiative, a protective order prohibiting the disclosure of confidential, malicious, personal, or privileged information or material submitted in bad faith, and directing that the proceedings be so conducted as to implement the order. Upon the filing of a request for a protective order, the information or material that is the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time. Within thirty (30) days of the committee's decision on a request for protective order, or of the committee's issuance of one on its own initiative, an aggrieved person or entity may request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the supreme court has acted, or the period for seeking supreme court review has expired. A motion for review of the professional conduct committee's decision about issuance of a protective order shall be filed as a confidential matter in the supreme court.

Official Version

(IV) Confidentiality and Public Access

(a) *Confidentiality of and Public Access to Proceedings and Records.*

(1) *General Rule.* The confidentiality of and public access to records, files and proceedings shall be governed by Supreme Court Rule 37.

(2) *Public Access to Files.*

(A) *Grievance against Person Not Subject to Rules of Professional Conduct.* Correspondence to the grievant relating to a grievance against a person who is not subject to the rules of professional conduct shall be available for public inspection for a period of two years. After this two-year period, the correspondence shall be destroyed.

(B) *Grievance Not Docketed as a Complaint.* All records (other than work product, internal memoranda and deliberations) relating to a grievance filed against a person who is subject to the rules of professional conduct but which is not docketed as a complaint, shall be maintained at the attorney discipline office for two (2) years from the date of original filing, and it shall be available for public inspection during this period. After this two-year period, the records shall be destroyed.

(C) *Complaints.* All records (other than work product, internal memoranda and deliberations) relating to a complaint that is docketed shall be maintained at the attorney discipline office and shall be available for public inspection in accordance with the provisions of Supreme Court Rule 37. Paper records may be destroyed after:

(i) three years of the date of notice of dismissal, with or without a caution; or

(ii) three years of the date of an annulment in accordance with section (V) of this rule; or

(iii) five years after the death of the attorney-respondent.

(D) *Index of Complaints.* The attorney discipline office shall maintain an index of complaints docketed against each attorney, which shall contain pertinent information, including the outcome of the complaint. No index of grievances that are not docketed as complaints shall be maintained.

(E) *Protective Order.* Any person or entity, at any point in the processing of a complaint, may request a protective order from the professional conduct committee, or the committee may issue on its own initiative, a protective order prohibiting the disclosure of confidential, malicious, personal, or privileged information or material submitted in bad faith, and directing that the proceedings be so conducted as to implement the order. Upon the filing of a request for a protective order, the information or material that is

the subject of the request shall be sealed pending a decision by the professional conduct committee. The professional conduct committee shall act upon the request within a reasonable time. Within thirty (30) days of the committee's decision on a request for protective order, or of the committee's issuance of one on its own initiative, an aggrieved person or entity may request that the supreme court review the matter. The material in question shall remain confidential after the committee has acted upon the request for protective order until such time as the supreme court has acted, or the period for seeking supreme court review has expired. A motion for review of the professional conduct committee's decision about issuance of a protective order shall be filed as a confidential matter in the supreme court.

APPENDIX C

Amend Professional Conduct Rule 5.5, which took effect on a temporary basis on March 1, 2007, by repealing subsection (e) as follows:

Unofficial Annotated Version

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a United States jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this State shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this State for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this State.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this State that:

(1) are undertaken in association with a lawyer who is admitted to practice in this State and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this State or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this State or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are

reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this State that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

~~(e) A lawyer admitted in another United States jurisdiction who acts in this State pursuant to subparagraphs (c) or (d) shall:~~

~~(1) be subject to the New Hampshire Rules of Professional Conduct and the disciplinary authority of the supreme court; and~~

~~(2) not hold himself or herself out as being admitted to practice in this State and shall not solicit clients in New Hampshire.~~

Official Version

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a United States jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this State shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this State for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this State.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this State that:

(1) are undertaken in association with a lawyer who is admitted to

practice in this State and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this State or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this State or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this State that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.